

COBBETT'S WEEKLY POLITICAL REGISTER.

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TRIAL OF MR. WHITE,

Proprietor of the Independent Whig.

This Trial, the proceedings of which, as reported in the news-papers, have been inserted in the present and the foregoing Numbers of the Register, call for some remarks from me, and, indeed, from every man, who has any portion of the English press in his hands, and who wishes to see that press retain any portion of the liberty that it formerly enjoyed.

The publication, for which Mr. White was prosecuted, through the means of an *Information Ex Officio*, related to an order for the bestowing of *Medals* upon Officers, who had been present at the battles, called victories, in Spain and Portugal. The Order appeared in the London Gazette, sometime in the summer of 1810. Mr. White was in Dorchester Gaol at the time when the publication took place. His Son wrote the article, and it appears, that proof was produced, that the father never saw it, till after it was published. When the prosecution was commenced, Mr. White was still in Gaol; the *three years*, which, for two former publications, he had been sentenced to be imprisoned, were, as yet, unexpired, when this new *Information Ex Officio* was instituted against him. The Son, conscious that the guilt, if any, lay wholly with him, offered himself to the Attorney General as the responsible person, ready to abide the consequences. This offer was refused, it is stated by Mr. White, unless the latter, by withdrawing his plea of "*not guilty*," would lay himself at the mercy of the Attorney General. This Mr. White, conscious of his innocence, refused to do; and, accordingly, the prosecution was carried on against him.

I shall first take a view of the *nature of the publication*, having read it at the time, and having also read it since, with great attention. It was, for the most part, a very spirited and very sensible article, though written without that caution, which the present humbled state of the press and the fashionable clamour against bold expression rendered prudent. It complained that the Medals in question were to be given to every one of a rank above

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Lieutenant Colonels inclusive; it asked, why these marks of honour were not distributed also amongst the *soldiers*; and it then proceeded to make a comparison between the conduct of our government and the conduct of the Emperor of France as to the distribution of marks of honour, and gave the preference to that of Napoleon, insisting that his was better calculated to inspire the soldiers with zeal for the service in which they were engaged. Besides this, the article spoke of the present ministry as weak and corrupt, and used, in this respect, those common-place expressions, which each of the political parties are in the constant practice of using towards their opponents. But, it said nothing more than those parties are in the daily habit of repeating; and, surely, if the youthful author was deceived, he might well be excused if he took the parties at their words. As to this part of the article, however, it might as well have been omitted; it was filling up space to no useful purpose; there was no man that read the article who had not, long and long before, come to a settled opinion as to the real character of the ministry, one way or the other.

As to the first part of the article, the Attorney General alledged in his speech against the unfortunate and woe-worn defendant, that the tendency was to *alienate the hearts of the soldiers from the service*; first, by telling them that they were deprived of their due share of the honors they had won; and, next, more especially by pointing out to them, that the French soldiers were, in this respect, used better than they were. The reader will perceive, that this argument makes no distinction between *truth* and *falsehood*; for, it is the *tendency* only that is brought into view; so that, according to the Attorney General, whether the statement were true or false, it would be equally criminal, if the tendency was to alienate the hearts of the soldiers from the service; and, if this doctrine be admitted, every thing is criminal that has such a tendency. Suppose, for instance, a farmer were to see a recruiting party going down a lane, and were to see the Serjeant, Corporal,

and Drummer knock a poor recruit's brains out, and then pick his pockets of his bounty money. Must the farmer not speak of this? Must he smother his knowledge of the murder, lest the relation should discourage young men from enlisting? I saw, some time ago, in the Salisbury Journal, an account of the flogging of a young man in the Militia, because he had married! Was this to be smothered, lest it should alienate the hearts of young men from the service? Thousands of cases might be supposed, and to *all* of them this doctrine would apply equally well as to the case before us.

It has a tendency, we are told, to make the soldiers *dislike the army*. Well, and what then? "Why, then the army would be broken up." Oh; no: that is false logic: that is not reasoning. The natural consequence, or at least, the proper consequence, would be a *change as to the things complained of by the writer*; and, then, so far from tending to make the soldiers *dislike the army*, the endeavours of such writer would have a tendency to make them like it better than they can now like it; and, of course, these endeavours tend to the strengthening of the military force of the country. Sir Francis Burdett, for instance, is using all his endeavours to put an end to the *flogging* of soldiers, and it is, I am pretty sure, a cause that he will never abandon till he sees it accomplished. But, is he to be told, that these efforts tend to the *breaking up of the army*? He says, on the contrary, leave off flogging and you will easily get plenty of good men for soldiers. And, is it in human nature to believe that he can, as to this matter, be wrong? Will any thing in the shape of man pretend to believe, that soldiers would like the army *less* on account of the abolition of flogging?

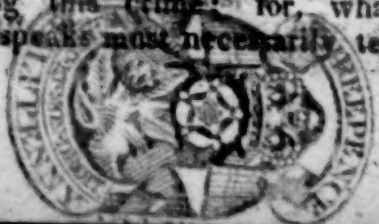
But, these publications make the soldiers *discontented* with the state of things that now is. Well; and has not every speech, at a public meeting, in favour of a petition for redress of grievances, that tendency? Is it not precisely the object of every such speech? For, as long as people are contented with what is going on, why should they petition or remonstrate? This doctrine of its being a crime to *excite discontent* strikes at the very root of political liberty. Every man who writes or speaks in *disapprobation* of what is going on comes under the charge of committing this crime: for, what he writes or speaks most necessarily tend to

excite *discontent* against people in power; every *petition*; every *address* (except it consist of praise); every thing, in short, which is, in whatever degree, expressive of disapprobation of the acts of the government, is a *crime*; is an act, for which the perpetrator may be punished *more severely than nine-tenths of the felons*! What would have been said to a doctrine like this only twenty years ago?

This doctrine goes at once to the utter extinguishment of every thing like discussion. To excite *discontent* against any act of the government that you think to be injurious to the country is not only a *laudable* mode of proceeding, but it is the *only* mode of proceeding that has any sense in it. In what *other* way, I should be glad to know, are you to go to work to correct what is not within your own absolute power to correct? If any of us want a road mended or turned, do we not endeavour to make our neighbours *discontented* with the old road? And, if I want to see a ministry turned out, how, in the name of common sense, am I to go to work, except it be to raise the public voice or the king's voice against them; and how am I to raise those voices against them, unless I make the public or the king *discontented* with them? Oh! blessed *Liberty of the Press*! We may "*discuss*," oh, aye, that we may! We may "*discuss*" the conduct of the government; but, woe be unto him amongst us, who dares to commit the crime of *exciting discontent* against it in the minds of those who attend to our discussions. In short, this doctrine leaves us at "*perfect liberty*" to write and speak as much as we please, so long as our writing and speaking are calculated to produce *no effect*.

But, Mr. White's publication drew a *contrast* between the treatment, in one respect, of the *English* soldiers and that of *French* soldiers, and this contrast was to the disadvantage of the former; it exhibited the French soldiers as treated, in the distribution of honours, better than the English soldiers. This was a circumstance heavily dwelt upon. This was what appeared to form the grave part of the offence. This was what seemed to give it, in the mind of the prosecutor, its deep die of offence. Whether it was *true* or not did not become a question; for, the *truth* was not, according to the mode of prosecution, a circumstance that could be stated in justification.

It is very odd to observe with what



anxious attention every word is watched which tends to this point; every word which tends to cause it to be believed, that the French soldiers are treated better than ours. *Why* this anxiety? It was never known to exist before. It is a jealousy quite of modern date; and, really, if it must exist, it does not appear to be very wise policy to be continually discovering it, and especially in such a serious manner. But, is it, then, really an offence in law; is it a matter coming under the description of a *crime*, to be punished more severely than many felonies; is it to commit an offence of this sort to compare the treatment of English with that of French soldiers and to give the preference to the latter? If this be so, why, then, what belonging to France must we say is better than a thing of the same sort belonging to us? We see no scruple made in imitating the measures of Napoleon in certain points, though, indeed, it may be said, that the imitation is very awkward. We are told, that there are corps of *Lancers* going to be established in our army; though we were once told, that those *Lancers* were a set of barbarous ruffians who had not sense enough to know when they had had a sufficiency of beating. We are told that his Royal Highness the Regent wears *French Pantaloon*s when reviewing the troops. And, if it be laudable, as it appears to be thought, to imitate the French as to these matters, why should it be regarded as a crime to recommend the imitation of them in the distribution of rewards amongst our soldiers? If any man had recommended, in print, the establishment of corps of *Lancers*, he must have done it upon the ground, that the corps of that description in the French service were better than our corps of horse; and, would it not have been a grievous libel thus to hold up the French troops as superior to our own? Would it not have been to endeavour to excite *discontents* in the army and the nation against the government and the chiefs of our army?

If this doctrine be acted upon, it is clear, that, whoever prints a paper, in which a contrast is drawn between *any thing* English and *any thing* French, disadvantageous to the former, exposes himself to the charge of *criminal libel*. French laws must not be preferred before English laws; nor, do I see why French wines should not be liable to the same sort of interdict. Sometimes, however, vastly

loyal men, without perceiving it perhaps, fall into the commission of acts of this kind, a remarkable instance of which occurred in the speech of Lord Sheffield, at the last Lewes Wool-fair. He was stating the causes of the unfortunate low price of wool, amongst which he stated, that there were large quantities raised in other countries, many of which, he said, enjoyed the great advantage over this country of *not being burthened with tythes*. Now, this not only pointed at France; it not only exhibited to the mind of every hearer a contrast between England and France, clearly advantageous to the latter; but it necessarily implied a strong commendation of that revolution and of those jacobins, against whom England has been so long at war. Here, then, was a field for innuendoes! What excursions might the mind of our active Attorney General have taken here! The author of this speech (printed in most of the news-papers), how came he to escape a charge of endeavouring to subvert the establishments in Church and State? He holds out to the *envy* of the farmers those neighbouring countries where there are *no tythes*. And is not this full as bad as to teach the soldiers to envy the French soldiers? Is not this an endeavour to excite *discontent* amongst the farmers? Is it not, in effect, to inculcate, in a manner not very indirect, the necessity of a *revolution like that which has taken place in France*? No: it is no such thing; but, it is just as much that, and more too, than Mr. White's was an endeavour to excite amongst the soldiers a spirit of mutiny. And what was to deprive Mr. White of the right of praising the establishments of Buonaparté which would not also deprive Lord Sheffield of that right? Had not the former as good a right to complain that our soldiers were not treated so well as Buonaparté's as the latter had to complain that our farmers were not treated so well as Buonaparté's farmers? The object of the war we are carrying on, is, we are told, to preserve us against the endeavours which Napoleon is making to take away our independence; to deprive us of our *freedom*; to take from us all our manifold blessings, and, amongst the rest, that supreme blessing, the *liberty of the press*! If our soldiers are persuaded, that they are treated worse than Napoleon's soldiers, they will, it is supposed, fight for us no longer; the war would, then, cease of course: and we shall lose all our blessings. But, Lord Sheffield would not, it

seems, object very strongly to be deprived of one of our blessings: namely, the blessing of *tythes*! Two, I faith! Two blessings; for his Lordship takes in *taxes* as well as *tythes*. The dulness of the wool-market "may," he says, "in great part, be attributed to *our own bad policy*, the neglect of encouraging tillage, the suffering it to labour under great expences, permitting the grain of other countries comparatively *untaxed*, and *untithed*, to enter our ports." This was the most home stroke at "*social order*" that I have witnessed for a long time; it was no battling at the elbows and cheek-bones; it was what the boxers call a body-blow. It conveyed volumes into the open ears of the audience, not a man of whom (unless he was a lay impropiator) did not anxiously wish to get rid of *tythes*; not a man of whom did not know that France was meant principally by the *untithed* country; not a man of them did not know, that *tythes* were gotten rid of in France by the *overthrow of the old government*. They all well knew, indeed, that the *tythes* were done away by the republicans of France; that they were abolished by the very men against whose principles this country, in the year 1793, entered upon the dreadful war which is still going on; that they were abolished by Brissot and Paine and Guadet and Pethion and Vergniaud and Roland and the rest of that band, who have been represented as the worst enemies of order and law and especially of royalty; that, in short, the *tythes* were abolished in France by the sworn enemies of kingly government. The hearers of Lord Sheffield would not fail to bear this in mind; this they would remember perfectly well; but one thing they might possibly have been uninformed of; they might not have been informed, that Napoleon, in restoring the monarchy, had *not restored the tythes*; they might not have been informed of this; they might have supposed, that, as the kingly name and authority had returned; they might have supposed, that, as there were Bishops and Priests again in France, the *tythes* must have been restored: this they might have thought, and would, of course, have concluded, that the farmers of France had, after all, *gained nothing* by the revolution; but Lord Sheffield did not seem disposed to leave them in this error; his lordship did justice to the government of Napoleon. Whether he was well aware of what he was doing is more than I can say.

I have dwelt the longer upon this instance as it affords a case exactly in point with all those which have lately been the subject of so much discussion. To tell the people of England, and particularly to tell the cultivators of the land, when accounting to them for the dull sale of their produce, that one of the causes of the calamity is, that the government permits produce to be imported from countries (necessarily alluding to the French territories) *comparatively untaxed*, and *untithed*; what is this but to tell them, 1st, that the government occasions the calamity; and next, that the *cause* of those other countries being able to send grain into this cheaper than our own grain, is, that the lands in those countries are *untithed*, and that, when compared with us, the people are *untaxed*? Well, and what then? Had not Lord Sheffield a right to tell the Sussex farmers this? To be sure he had; but he had no greater right to tell it them than Mr. White had to tell the soldiers that they were not so well off as the soldiers of France. Whether either or neither spoke the *truth* is of no consequence in the argument; for, Mr. White's offence would, in the eye of our libel law, have been not the less if he had been able to prove the truth of every word that he had published. We shall suppose both Lord Sheffield and Mr. White to speak their real sentiments; and then, I think, no man will hesitate to say, that the publication of the one was full as justifiable as the speech of the other.

I have before spoken of the *ill-look* that this jealousy has; this uncommon anxiety to keep out of print all these contrasts between the situation of the French and English soldiers; and, indeed, every comparison, wherein the state of the two nations is spoken of in terms advantageous to France. This anxiety has an ugly look. It argues, that there is not a stout feeling within. It argues a fear on the part of the prosecutors, that somebody or other will *believe* what is said by the alleged libeller; that somebody or other will *really think*, that the French soldiers are better off than the English soldiers, and that the people of France, after all that has been said, are better off than the people of England.

The contrary is, indeed, constantly and loudly asserted by the prosecutors and their advocates, who say, that the army and the people have **TOO MUCH SENSE** to be thus misled; that they are too *thinking*.

and too *loyal* to be led astray by any such efforts; and, indeed, that they most heartily *despise* the contemptible incendiaries, by whom those efforts are made. Well, now, if this were really the case, or if such were the opinion of the prosecutors, why not save themselves the trouble of prosecuting? Why prosecute men for publishing what you declare to be harmless in effect? Why take the pains to prosecute those, whom no man thinks of consequence enough to *hate*, and whom he can only find in his heart to *despise*? The object of prosecution is said to be, to prevent others from offending in the like manner. But, of what use is this, if the offence not only has done no harm, but can do no harm? If the soldiers and the people, the parties to be seduced, have been proof against the attempts at seducing them, and if they have been so, not from accident, not from any particular circumstance, but from character and mind and feeling; if this be the case, why prosecute? It is, in this case, prosecuting under colour of *preventing* what is *impossible* to take place. If a man were to publish an address to the dogs in England, telling them that they were ill-used, and that Napoleon's dogs were used much better. Would you prosecute for this? No. And why? Because, whether true or false, it could produce *no evil effect*. The dogs would not be instigated to break out against their masters by such a publication, because they would not understand what was addressed to them. Precisely so! And why prosecute, then, a man who has written that, which from the very *character* of the parties intenced to be seduced, *must* be *despised* by those parties? Why prosecute for that which you know must necessarily fall dead from the press? But, is there not, at bottom, a little affectation in these boasts about the *contempt* which the army and the people bestow upon the alledged libellers, who draw contrasts between the French and English soldiers? Is there not a little affectation at bottom? And will the reader believe, that contrasts, in which the soldiers of other countries than France should be put before those of England, would be watched with equal jealousy? Does the reader believe, for instance, that there would be any great danger in a writer's preferring the situation of an *American* soldier to that of an English soldier? Any writer might, I fancy, sing the praises of the situation of the Turkish or Russian or Prussian or Austrian or Algerine soldier long enough without attracting

any particular notice from the Ex Officio prosecutor. But, it is the *French*! Oh, the *French*! There is the gall and vinegar! There is the gravel to the teeth; there is the blast to the eyes! It is the *French*! We must say nothing good, it would seem, of the situation of France, or of any thing belonging to her. We must believe that her people are not only poor but starving, though they send us victuals in exchange for the remnant of our gold; and we must believe that her soldiers are good for little, though they have conquered the continent of Europe having us for enemies during the whole of the time.

Reader; English reader, how are things changed of late years! What wonders have been worked by this French revolution! When was it before known, heard of, or dreamt of, that offence was likely to be taken at a comparison drawn between any thing *French* and any thing *English*? Look back, and consider how strange it would have appeared for the English government to apprehend danger from any such comparison. Look at Hogarth's story of the *Gates of Calais*. Look at his contrast between England and France. Surely we are not the same nations that we formerly were! What! and do our rulers really fear the effect of contrasts drawn between our situation and that of the nation of *frog-eaters*? Look at the French soldiers in the above-mentioned contrast of Hogarth: ruffles without a shirt; bones sallying out through the skin; soup without meat; the sword used as a spit for frogs; the bayonet pointed at the backs of the soldiers to make them face the enemy. Such were the pictures, which we formerly drew of the soldiers of France. And, is it of contrasts between English and French soldiers that our rulers are now afraid? Is there, can there be, any ground for such fears? And, if there be no ground for such fears, where is the policy of prosecutions founded upon the supposed *danger* of such contrasts? Perhaps, in the whole of the symptoms of the times, there is not a worse than this; that the English Prosecutor should lay such mighty stress upon the evil tendency of comparisons drawn between the situation of the English soldier and that of the French soldier; that he should arraign men at the bar for drawing such comparisons; that the act should be considered as one deeply affecting the safety of the nation; an act which, formerly, would have attracted no more attention than a comparison of French against English

horses or cows. It is manifest, that there has been a great change in the relative situation of the two countries as to character, or, that these alarms are totally groundless; and, if such change has taken place, and to the advantage of France, the change must be ascribed to her revolution. To profit from whatever she has discovered of good, shunning carefully all that has proved injurious to her, would be the wisest course that our government could pursue, and would be attended with much better consequences than any endeavours to suppress the knowledge of those benefits which she has derived either from her revolution or from the laws and regulations of her present ruler.

My Article is much longer; but I am compelled to leave off here, and reserve the remainder for my next Number, because I could not divide the proceedings on the Trial again. The following very sensible letter, I could not delay inserting.

WM. COBBETT.

State Prison, Newgate, Friday,

15th November, 1811.

ON MR. WHITE'S TRIAL.

"Mr. Cobbett; I shall leave it to your judgment, to insert in your Register or not, the following remarks on the Liberty of the Press. The result of the trial of Mr. White, is pleasing to every humane man, patriot, and sincere friend to the Liberty of the Press. In the love of truth, I beg leave to attract Lord Ellenborough's serious attention, to the subsequent concise observations, the *multum in parvo*, to use a little Latin, Mr. Cobbett, for once in a way.—Every man, my Lord, who writes at all respecting Governments, must write, either *for*, or *against* Government, and what he writes must be either *truth* or *falsehood*.

"In the first place,—*Truth written for*, or *in favor of Government*, will not be considered as libellous,—it is due to the Government, and to the People. There is no danger that the Attorney General will prosecute it.—But in the second place, what shall we say of *Truth written against Government*? it has been said, my Lord, that it is libellous—that it brings the Government into *disesteem*,—that it is of injurious tendency,—to whom, my Lord? to those, against whom it is directed, the Governors; 'ay, there's the rub; but to whom is it *beneficial*? I answer, to the *People*. This

is the very essence and vitality of the Liberty of the Press—its very meaning and explanation—its form and pressure—its principal object and prerogative. And this truth ought to be written in letters of gold, on the heart of every Englishman—that the *Liberty to write Truth against the Government, is for the BENEFIT of the PEOPLE*. But, it is said, it will bring the Government into *disesteem*—so it should, my Lord—that is its great use and intention, its highest and noblest praise. Injustice, Oppression, Corruption, Bigotry, Fraud, Deceit, and Peculation, ought ever to be held in disesteem, in abhorrence by a virtuous People. To expose continually, and without ceremony, the vices and errors of Government, to stamp its measures with a true character, and by exposing, to tend to remove the grievances, are the grand uses and blessings of the Liberty of the Press. Now, I beg leave to turn my attention to the Attorney General.—In the first place; *falsehood written against Government*, is injustice to the Government and to the People. Mr. Attorney General will doubtlessly keep a keen eye upon this.—In the second place; what shall we say of *Falsehood written in favor of Government*—I assert it is an infamous libel—a libel equally upon the Government and the People—it is extremely injurious to both. It brings the Government, as well as the whole nation, into utter contempt and derision—it deceives the People, and will ultimately destroy their confidence in the government, as well as their integrity. It would require a volume to trace its evil effects thro' all their windings and concatenations. And should Truth be shut up in a dungeon, while Falsehood, and Impudence, and Fraud, and Oppression, stalk thro' the palace, as well as thro' our streets, and towns, and villages, with impunity? Then adieu, Dear and Noble Liberty! the paragon of this world! for whom our ancestors poured out their generous blood; and farewell, the greatness and happiness of England! Thus I think I have fully, yet concisely treated this important subject—and shown that the Liberty of the Press, is the Liberty to write Truth against the Government, for the benefit of the People. Your, &c.

G. G. FORDHAM.—Nov. 6, 1811. *Royalston, Herts.*

TRIAL OF MR. WHITE.

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.....Had my imprisonment, (as is the common usage), been suffered to take place in the County or District where the offence was committed, instead of one hundred and twenty miles distant, this Article would then have been subject to my revision. Therefore it is that I say it was the *operation of the Law* which has brought me into this peril, and I hold myself justified in declaring it, because I was thereby deprived of the power of preventing its insertion. The Law is said to consider nothing but the act, and the party attached thereto:—And why?—to prevent collusion and evasion, but not to destroy the innocent.—The Law knows of no other persons than such whose names accompany the subject of Publication:—true;—but will it *refuse* to know them when tendered? And, above all, will it refuse to discriminate between the innocent and the accused? The real writer in this case offers to produce himself,—is Justice then evaded?

There is, I am certain, no person present, who has heard the circumstances of my case, but what must be convinced that in reason, and consequently in strict justice, I am not guilty of the CRIMINAL INTENTION ascribed to the meaning of the Article in question;—

It was the act of my Agent which gave it to the world, it is true, and that in my name;—whence the law implies that it becomes mine also:—But, Gentlemen, suffer me to ask,—how far this Peril of Agency,—this responsibility for the actions of others, is permitted to extend?

Are there to be no exceptions to the rule in this case?

What if my Agent, by sudden mental affliction, becomes lunatic; and inserts, without my knowledge or consent, certain expressions which should amount to High Treason?—If I am not suffered to bring that Agent forward, so cannot I avail myself of the exculpation to which he would be entitled from the nature of his affliction:—And, need I ask, Gentlemen, would you calmly send me, by your Verdict, to the scaffold for a crime so committed?

Where then does the Law fix the Line of responsibility?—Does it embrace all other subjects and circumstances, and only stop short of *madness or treason*?

Again:—does it include the peril of immoderate imprisonment, personal ruin, the destruction of the means of existence,—

and still affect to meddle not with death?

Where, I ask, is the boundary to be sought to this liability for the deeds of others?—Is it not amply sufficient for the ends of Justice, when an error has been committed, that neither Agent nor Principal desires to screen the imputed offender?—And is not the Criminal Intention charged upon either of them, by this means, proved to be misapplied?

Surely, Gentlemen you will admit, that the law was never designed to be so vague, illiberal, and unjust, as to insist upon identifying the Innocent with the Guilty.

In all criminal cases you must well know, it is the *moral intention which constitutes the crime*!—the hands perform what the heart directs, or so it is believed; and, where it is not so believed, as in the case of unintentional Killing, the Jury will never ascribe an Intention where none is proved to have existed.

Gentlemen, I have, I hope, convinced you, that neither my heart or hand consented to this act;—but, as my property was made the medium of its propagation, though perfectly unknown to me, it became my duty to produce the Author of the matter alleged against me, or become identified with him in the Accusation.—Now, as this is what I have offered to do,—as neither the matter nor the motive is justified or acknowledged by me, nor yet the Author attempted to be screened from the power of the Law;—wherein, Gentlemen, does it appear that I have provoked that Law, and why does it pursue me with unrelenting rigour?—Gentlemen, I need not remind you, that it is your province to decide upon the whole merits of the case before you, both as to *Law* and to *Fact*; and, above all, Gentlemen, according to the solemn conviction of your own consciences:—this is at once your privilege and your duty; and you will, I am confident, most scrupulously exercise them.—

The Act of Parliament, known by the Title of Mr. Fox's Act, confirmed to the Jury the right of pronouncing in cases of Libel upon the whole matter placed at issue in the Indictment or Information, and of the sense ascribed to the same;—It gives to the Jury the complete cognizance of both the *legal* and the *moral* guilt of the publication, even though such Publication be considered *legally* a Libel;—which clearly infers, that there may be a Publication, conceived to be a Libel in the *Legal* sense, and yet the publisher may be entitled to his acquittal, if the *moral* guilt

be not made manifest.—By this Act, Gentlemen, you are impowered and bound to pronounce upon *the whole matter* in issue which includes both the *legal* and *moral* guilt;—and you are called upon by every principle of duty and honour to ACQUIT where the MORAL guilt be not undeniably established.—Gentlemen, I appeal to facts that this is the true construction of the Act, which was most clearly defined in the case of Mr. John Reeves, which, occurred soon after its passing, and while several of the Legislators, who were instrumental in its adoption, were on the Bench and at the bar.—In this case, the *matter* was held to be culpable, yet he was cleared of a *culpable Intention*:—the Foreman of the Jury upon that occasion pronounced these remarkable words:—"My Lord, the Jury are of opinion, that the Pamphlet, which has been PROVED to have been WRITTEN by John Reeves, Esq. is a very improper Publication:—but, being of opinion that the Defendant was not actuated by the criminal motive imputed to him in the Information, find him NOT GUILTY!"—And, Gentlemen, should you even be of opinion that the matter alledged in this prosecution is of the nature of Mr. Reeves's Book; yet still, unless you are equally convinced that it was given to the world with the intentions ascribed to it,—the Author of this Publication must be equally Not Guilty:—the Analogy is complete. If the Jury in Mr. Reeves's Case, though they condemned the *matter*, believed not the imputed Criminal Intention, though Reeves himself was the Author; much less can you, Gentlemen, impute a Criminal Intention to ME, after all which I have offered, after all which you must have ascertained, after the conviction you must have drawn that I was totally ignorant of the Publication in question. Gentlemen, it would at once be an insult to your understanding and your justice, to suppose it possible that you can ascribe a Criminal Intention to me, with respect to a thing I never saw, nor could have seen till after its publication,—while you perceive, that a Jury, who could not make their minds satisfied that the WRITER HIMSELF had the Criminal Intention imputed to him, would not suffer his conviction. I had not, could not have, the Intention imputed to me; and of this, I doubt not, you are clearly convinced.

Here, then, Gentlemen, is a direct and absolute precedent, a plain and positive example for your guide and authority,—a

Recorded Verdict for your precept and imitation!

Indeed, if the object of Mr. Fox's Act was not to bring the *moral* guilt of the Defendant, in the cases of Libel, within the purview of the Jury, the act itself was *superfluous* and nugatory.

But it not only does this, but also explains or declares, what might before have been doubtful, the *nature of a Libel*;—and if the Judge is to treat the matter in his charge to the Jury *as in other criminal cases*, WHICH THIS ACT ENJOINS HIM TO DO, the Defendant is unquestionably entitled to the same PROTECTION *as afforded in other criminal Cases*; and consequently that the criminal intention (whatever be the nature of the Publication) must be made manifest, or conviction cannot follow.

It has, I know, been held, and may still be held, that the Declaration of a Criminal Intention, as specified in the Record, is a mere matter of form,—that they are phrases of Law,—mere words of course, and out of the consideration of the Jury:—that is, that the Jury is to confine itself to judging of the *Fact*, which probably requires little judgment at all, and the Court alone is to be left to decide on the Intention.

We find that Lord Mansfield laid it down so to the Jury, upon the trial of Mr. Miller, for publishing Junius's Letter to the King;—He said, "that the words scandalous, seditious, &c. were inferences of law, and were not under the cognizance of the Jury!"—But the Jury thought otherwise; and, judging of the Intention as well as the Act, returned a Verdict—"Not Guilty."

Upon the Trial of Mr. Baldwin, for publishing the same Letter, Lord Mansfield again said,—"The epithets false, scandalous, and malicious, are, AT PRESENT, all words of course:—if the writing be found a Libel, they are merely inferences of Law!"—The Jury, however, who rightly considered, that a man should be charged with nothing more than was needful to his case,—that *Fact*, not *Inference*, was to constitute the Criminal Intention and direct their Verdict,—and believing no Criminal Intention to be justly ascribable to the Publisher,—unanimously pronounced him Not Guilty.

Upon the memorable trial of Mr. Owen, in 1752, for printing and publishing a Libel against Alexander Murray, Esq. Mr. Pratt, (afterwards Lord Camden,) in his argument for the Defendant, has the following words:—"If there is an In-

dictment assault to must be find him with an proved, and the if it be not tatedly a slaughter the case formation malicious the Jury nion del ACCORDI

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dictment preferred against a man for an assault to commit a rape, the *Intention* must be proved, or else the Jury cannot find him Guilty:—the same of an assault, with an intent to kill, if the *Intent* be not proved, he must be acquitted;—*if he kill*, and the *Intention* be not proved,—that is, if it be not proved, that he killed premeditatedly and of forethought, it is but manslaughter;—therefore (said Mr. Pratt,) in the case before us, if that part of the Information be not proved that he published maliciously, &c. YOU MUST ACQUIT!" and the Jury, notwithstanding a contrary opinion delivered by the Judge, DID ACQUIT ACCORDINGLY!!!

In the case of Mr. Almon, the Bookseller, Mr. Serjeant Glynn moved for a new Trial, and offered to produce the affidavit of Mr. Mackworth, the Foreman of the Jury, setting forth,—“that he was by no means satisfied, with respect to Mr. Almon's servant selling the seditious Pamphlet in question, *with the privity, consent, and knowledge of his Master*; and, if so, Mr. Almon COULD NOT BE GUILTY of the crime laid to his charge!” One of the Judges laid down also at the time, “that no Man was answerable for the CRIMINAL actions of his Servants!” though another of the Judges observed, that every Bookseller might by such subterfuges escape. But, Gentlemen, is there the slightest appearance of *subterfuge* in the case now before you? Can there be any imprudence or censure imputable to me in being compelled to leave the conducting of my business to my Agent; that Business which I was constrained so to leave, or to relinquish altogether? There is surely much to allow for in my situation, but nothing to condemn: necessity has combined with law against me, and I must depend on Justice and an enlightened Jury for relief. I shall adduce one more instance to prove the liability of Agents:

Barnard, K. B. 336. Fitzgib. 47. The King v. Nutt. In Hilary Term, 2d. Geo. II, 1729, A woman was indicted for being the publisher of a treasonable Libel, but the evidence only proved that there the Libel was sold, but not that she knew of its being sold; in fact, she proved that she lived a mile from the shop, and had been bed-ridden for a long time; so that the presumption was that she really knew nothing of it. Kettleby trusted upon this evidence for an acquittal; for, though an action might lie against Masters or Mistresses for the actions of their Servants in a civil suit; it was not reasonable it should

do so in a CRIMINAL PROSECUTION. The Chief Justice said, that the Master of a Shop was answerable for every Book sold therein. The Jury, however, refused to do any thing else than find the circumstances specially, and deliver a Verdict of publishing only: and the Attorney-General, considering it a hard case, consented to withdraw a Juror.

Gentlemen,—I stand here to be judged by the Laws of God and my Country;—and sure I am, you will not suffer the technicalities or imperfections of the one to militate against the purity and justice of the other! He who reads the Heart knows me to be as free from the imputed Offence as any of the persons in the cases I have quoted; and from the facts I have adduced, Gentlemen, you must, I doubt not, be fully impressed with the same conviction.—You will not suffer the intricacies of the Law to fetter or mislead your understanding, at the peril of your own peace of mind, and to the irreparable injury of a fellow-creature. Remember, Gentlemen, your Verdict is to be the Verdict of Truth, and Truth alone. I have shewn to you that the Information is incorrect,—that the Record is false,—it will be for you to determine whether you will concur in that falsehood, and convict me upon it. Again; you must be able to look your Country in the face, and solemnly declare, upon your oath, that you believe I really had the Criminal Intention imputed to me in the Record, to which I have offered to prove that I was neither privy nor consenting: You must believe that I concurred in the full intent and meaning of the expressions therein contained,—which I have offered evidence to substantiate that I did not sanction:—You must, Gentlemen, be able conscientiously to do all this, in direct contradiction to all I have adduced, before you can possibly pronounce me Guilty. Gentlemen, On your Verdict this day depends the Liberty, and I had almost said the *Life*, of a Fellow Creature;—as too surely I feel, that the farther abridgement of the one will soon cause the extinction of the other:—and surely *that* is neither merited by the imputed Crime, taken in its utmost extent, nor sanctioned by the Law of the Land.

The greatest punishment, permitted by the jurisdiction of this Country, next to Death, is that of Imprisonment; though in some cases, even a deprivation of Life would be mercy compared to the *torture of the solitary dungeon*! Gentlemen, a condemnation of farther imprisonment upon

me will probably combine both these evils:—the fountain of life, already nearly exhausted by the effects of a rigorous and tedious confinement, will assuredly soon be wholly stopt, by a continuance of the like endurance. There has been lately a most melancholy instance of the fatal effects of a rigorous confinement acting upon a feeble Constitution; creating first despondency, next despair and delirium, and ending in premature mortality.

These considerations, though not within the cognizance of the law, will not escape the notice of humanity.—Gentlemen, as honest men,—as men of candour and discernment,—as lovers of Justice,—established on Truth and guided by Mercy,—I conjure you to reflect seriously upon the true nature of the case before you.—Recollect, Gentlemen, the case I have just adduced of Mr. John Reeves; where the Jury, because not satisfied of the criminal intention even in the Writer himself, although they condemned his production, would not convict him for it.—Now, Gentlemen, I was neither the Author nor Publisher, nor did I, as stated in the Information, cause it to be published;—on what principle, then, can a Criminal Intention attach to me that was not applicable to Mr. Reeves, the actual Author of his own Publication?—His Information, like mine, imputed to him a criminal intention, which the Jury could not discover, although they knew him to have been the Author of the obnoxious article: will you, Gentlemen, consent to impute an intention to me, which I could not possibly entertain, having no knowledge whatever of what had been done in my absence?—Reflect, Gentlemen, therefore, on the most unprecedented situation to which I have been reduced;—brought here as I am, Gentlemen, by the power of the Law, to depend solely upon the effort of reason.—Gentlemen, I do not pretend to vie in legal argument with my Learned Adversary; but I will not yield to him one point in the argument of Truth. I know little of the Law but its inflexibility, but I know that I never wantonly or wickedly offended it.—Gentlemen, you may be told that I have incurred this hazard for mere lucre sake;—so it may be said of the soldier who falls in the field, or the pleader who sits in this Court; the same inference will attach to all, who risk their persons or their property, or employ their time or talents, to improve their fortunes, or provide for their families. This cannot be a reproach, or it would attach as well

in one case as another, either to me at the Bar, or his Lordship on the Bench.—But whatever view to lucre I may have had in pursuing my Public Labours, I cannot boast of much success in that particular; as the heavy hand of the Law has contributed to crush the hopes of many years of industry and application, and left me nothing to hope for, and little more to lose.—Gentlemen, as a fellow-creature, bent down with affliction and disease, chiefly the result of my long confinement, I may truly claim your sympathy;—but, as a Man, free from all intentional crime, I claim a higher interest in your breasts,—I claim your Justice!—Gentlemen, I am *Not Guilty*,—either in word or deed,—either in act or inclination,—of the Libel imputed to me. I have offered to prove that I conceived it not,—was not consenting to it, nor even saw it till it was published to the world.—Gentlemen, You will remember that your Verdict is to be given according to the tenour of the accusation brought against me:—You have no other point to consider than the bare charge contained in that Record, which you must believe to be *TRULY* made in *EVERY* part, or no Verdict can be founded upon it.—Now, Gentlemen, I have stated to you, that the very Place of Publication, which is the preliminary to the charge, is set forth *ERRONEOUSLY*. I cannot answer to such a charge. I cannot consent to acknowledge that my Office of Publication was in such a place.—And I put it to your candour, Gentlemen, whether you can consent to pronounce a Verdict against the evidence of *FACTS*. I plead not for the *FORMS* of Law, I appeal to you for the conviction of reason.—Gentlemen, It is my undoubted privilege to have my case treated on the same principle as all other criminal cases; and, does not every day's experience prove that the least error, arising either from ignorance or informality, is fatal to a Criminal Indictment? Gentlemen, Let me ask you, were I arraigned before you for a murder or a burglary, alleged to have been committed in a wrong County or Parish, though the fact was established, would not such an error prove fatal to the charge?—Gentlemen, You may be told that the Record does not pretend to specify the identical place of Publication, that it does not even mention Warwick-square, contenting itself with the name of London.—Now, Gentlemen, had this been so, I had also been content. Had it said London *ONLY*, I could not gainsay it. But why spoil the Record

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by a USELESS ADDITION; Why state in Publication to have been issued in a WRONG PARISH AND WARD?—Gentlemen, That such an error is fatal in a Criminal Case, the Trial of Thomas Wildey for felony, at the last Somerset Sessions, is a most convincing proof:—where the superfluous insertion of a single letter, (such as St. Michael's for St. Michael,) though it did not falsify the place, rendered the Indictment nugatory. But here, Gentlemen, is an absolute falsehood inserted:—I am persuaded you will never consent to find me guilty of publishing my paper where it never was published.—The next point Gentlemen, for your earnest attention is, that it charges me, in unqualified terms, with having published this article with a *malicious* and *seditious* motive, and you are called upon to AGREE WITH THAT CHARGE.—Let me once more ask you, Gentlemen, can *malice* attach where there has been no *forethought*?—Can a malicious motive be imputed to that man, who can prove he knew nothing of the act? You cannot possibly agree to think so. I beg you to remember, Gentlemen, THAT I KNEW NOTHING OF THIS MATTER.—Gentlemen, You are bound to decide upon the WHOLE matter in issue.—The Act of parliament, which I have before me, expressly enjoins you to do so:—it says, “The Jury may give a General Verdict upon the *whole matter* put in issue; and shall not be required by the Court to find the Defendant Guilty merely on proof of the Publication, or of the sense ascribed to it in the information!”—Therefore, Gentlemen, in the case before you, you must positively believe me to have had the *malice* WITHOUT THE FORETHOUGHT,—that I had the *malicious motive* ascribed to me WITHOUT THE KNOWLEDGE OF THE MATTER,—and that the Publication WAS ISSUED in a Parish and Ward where it never existed. All these palpable inconsistencies and falsehoods you must *implicitly believe*,—or you will acquit me of the whole charge contained in the Record.—Gentlemen, You must upon your oaths be convinced in your consciences—not merely that I have published the matter alleged in the Information;—but that I have published it with all the criminal intentions imputed in the Record—that I have published it for the express purpose of exciting disaffection and dissatisfaction among His Majesty's subjects;—that I have published it with the view of creating discontent in the Army:—or, your Verdict must be Not Guilty. In Reeves's Case, the then Chief Justice of England

stated to the Jury—“That in order to find the Defendant Guilty, they must be satisfied of the *evil intention* of the Defendant:—the *quo animo* was the question to be tried.”—Lord Kenyon charged, that they were to find “Whether their consciences were satisfied the motive laid in the information was the motive which influenced the Defendant in the publication:—in judging of the matter alleged, they were to judge of the *motives* with which the Defendant published it. That was not to be *his* decision, but it was for the decision of the Jury.”—He added—“That it should be remembered that all Law, and especially the Criminal Law, should be administered in mercy, for the King by his Coronation Oath was bound to administer the Law in mercy.” And now, Gentlemen, I conclude; with thanks to you and to the Court for the attention which has been afforded me; leaving my fate with confidence in your hands; persuaded, that, in the minds of an intelligent British Jury, Mercy and Truth will ever be found to prevail.

At the conclusion of his Defence, Mr. White was asked, Whether he meant to call Witnesses to speak to what he had opened.

Lord Ellenborough said, that the evidence he had stated would go only in mitigation, and not to acquittal; but his Lordship wished to know whether the Defendant would prefer having it on his Notes, or by Affidavit before the Court hereafter.

The Defendant at first chose to wait; but the Foreman of the Jury saying it would be more satisfactory to his mind to hear it, the Defendant called his Witness.

Lord Ellenborough told the Juryman to what extent only it would affect the case. Every Printer was responsible for what was printed at his press; otherwise the moment a man gets into jail, he might open his engine for all sorts of libel with impunity.

The Defendant said, that he did not intend to call his Witness, that the Attorney General might not have the benefit of replying.

Lord Ellenborough. He has that benefit whether you do or not in this case, if he choose to exercise his right.

The Defendant then called his son, John White, who said that he visited his father in prison every day, and acted as his amanuensis. He knew of every article his father wrote for the Paper, previously to its being sent to London. The Paper in

question reached the Defendant only on the Monday after it was published. He was with his father from twelve o'clock on the Sunday of its publication, and had been so for many days previously. To the best of the witness's belief his father never knew of the Libel till after it was printed. The Defendant had not been employed in writing or reading any such Article, to the best of the Witness's belief. If his father had seen it in manuscript, the Witness must have known it.

Question by a Juror. What time does the post reach Dorchester?—*A.* It depends upon the state of the road; generally about ten o'clock, or a little after.

2. What time does the post leave Dorchester?—*A.* About twelve o'clock.

Upon his cross-examination by the Attorney General, he said, he did not know who was the Author of the Libel. When asked whether he had not heard his father say whose it was, he asked Lord Ellenborough if he was bound to answer that question.

Lord Ellenborough. Certainly.

The Defendant interposed, and Mr. Lawes objected to the question.

Lord Ellenborough refused to hear the Counsel, who, he said, had volunteered himself into a situation perfectly new; and the Court expected that the Bar would set the Public an example in preserving the order of justice.

The Defendant complained loudly of injustice; and Lord Ellenborough cautioned him not to injure himself by such unfounded complaints.

The Witness said, he might have heard his father say the Libel was written by an elder brother. This brother corresponded with his father once or twice a week. The Libel was never contradicted in the Paper, which was published till now, but which had changed its Proprietor, the witness's brother having become so since his father came to town. The brother conducted the Paper while the father was in prison.

Upon his re-examination, he knew that his brother had a discretionary latitude as to articles under the head London, as the Libel was. Such articles were written the latest in the week, and must be left to an agent's discretion.

The Attorney General, in reply, said he was ashamed to take up the time of the Jury with a refutation of that part of the argument of the Defendant, which related to the parish and county in which the publication actually took place. In the

case of a murder, it might be necessary to state exactly where it was committed; but in the present case, the statement of the place of publication was a mere matter of form. The Defendant had entered into various other arguments, which, whatever effect they might have when offered at another stage of the prosecution, in mitigation of punishment, were at present totally irrelevant.—The Defendant had spoken at great length of the hardships of his situation; that he had offered to give up the real author of the libel on condition of escaping from prosecution. He would take upon him to say, that no publisher of a Newspaper had ever less reason to complain of hard treatment than the Defendant; but he could never condescend to submit to the terms which the Defendant wished to impose upon him, nor agree to the doctrine, that the proprietors of those publications in which libels have appeared, are not completely answerable for all such libels. A doctrine like this would lead to the most alarming consequences. He really could see nothing which could place the present Defendant out of the general rule of law. The Defendant did not dispute that this article charged against him was a libel, and that its intention was evidently to create dissatisfaction among His Majesty's Subjects, and to spread discontent among the soldiers; he did not dispute that it was scandalous and malicious; that it slandered His Majesty's Ministers in the most gross and unfounded manner; but he grounded his defence on this, that he was not answerable for any thing which was published during his confinement in prison; that any such improper publication was not his fault, but the fault of the law; for the law had confined him, and prevented him from exercising a superintendence over any thing which might appear in his Paper. The law had, indeed, sentenced him to imprisonment, because of his commission of an offence which called for that punishment; the Defendant had placed himself in Dorchester Gaol, by doing an act which called for the infliction of such a sentence; and nothing could be more unjust, therefore, than to charge that upon the law which was only chargeable upon himself; and when another act was committed more criminal than that for which he was sentenced, to say, that because he was prevented from superintending his publication, he was, therefore, not answerable for it. Such a proposition he knew not well how to ex-

nine; it was justice. I in London, derived by opened to e was he to brands thro answerable fo there that In question who had s by his eld had ever y ent Whig, that the se disapprov pointed ou that this resorted t ing the g think of son whi his agent have been the writ he had t circumstanc state tha Gaol left all the ar to insert concern containi This, if this day the cour Had he in his p was co would l right; opportu Instead the poi he allo diery w them w all the was cal he thou a disav bly dis was po the De preten the lib chiefo avert duce, immec fendan

mine; it was neither founded on law nor justice. If a publication was carried on in London, from which all the profit was derived by the Defendant, because he happened to entrust the charge of it to others, was he to be permitted to send out fire-brands through the land, without being answerable for them? But what evidence was there that he disapproved of the article in question? He had asked that witness who had stated that the article was written by his elder brother, if any single article had ever yet appeared in *The Independent Whig*, from which it might be inferred that the sentiments of the libel had been disapproved of? No such article could be pointed out; and it appeared most evident, that this seeming disapproval was now resorted to solely for the purpose of eluding the grasp of the law. How did he not think of applying an antidote to the poison which had been disseminated by his agent? In doing this, there could not have been the smallest danger. Although the writer of the libel was his own son, he had no occasion to disclose that circumstance; he had nothing to do but to state that his confinement in *Dorchester Gaol* left him no opportunity to examine all the articles of the Newspaper previous to insertion, and that he had seen with concern an article make its appearance containing principles which he disclaimed. This, if what the Defendant had stated this day were sincere, would have been the course of conduct pursued by him. Had he been convinced that the article in his paper was mischievous, the road was completely open to him, and he would have endeavoured to set himself right; he would have taken the earliest opportunity to disavow its sentiments. Instead of that, however, he allows the poison to work on the public mind, he allows it to spread among the soldiery without endeavouring to furnish them with any remedy; and then, when all the mischief was done, and when he was called upon to answer for his offence, he thought proper to come forward with a disavowal. Let any man be as favorably disposed towards the Defendant as it was possible to be, could he, could even the Defendant's own friends and relations pretend, that if he had really repented of the libellous article, had seen the mischievous tendency of it, and wished to avert the effects which it might produce, he would not have published an immediate disavowal? But had the Defendant done this?—had he not quietly

allowed all the mischief to be done without taking the smallest step to endeavour to avert it, or to testify his regret? He was aware that he was unnecessarily consuming the time of the Jury; for the only time when such topics as had been urged by the Defendant could be brought forward with any degree of propriety was in mitigation of punishment. By law, the Proprietors of Newspapers were answerable for every thing which appeared in them; and it was because they were answerable that the law required them to furnish their names. If the doctrine of the Defendant, however, were to be listened to, the law would become an object of ridicule, a mere stalking horse, when every man might say that he had not, forsooth, the cognizance of any particular article in his Paper. By law, it was the condition of being a proprietor of a Newspaper to be answerable for whatever was contained in it. It was not contended, the article now charged against the Defendant did not contain gross and mischievous slander; and if it did contain such slander, as Proprietor and Editor of the Paper in which it appeared, he was every way answerable for it by law.

Lord *Ellenborough* then proceeded to charge the Jury. This was an indictment against the Defendant, *Henry White*, for a Libel. The first thing which was to be proved was the fact of publication;—and if, after the notice he had given at the Stamp Office of his intention to publish such a Journal at No. 23, *Warwick-square*, there could yet remain any doubts whether there was sufficient legal proof of the publication, those doubts must have been completely removed by the course which the Defendant had taken. It was certainly the right of every Defendant to determine whether he should conduct his defence himself, or whether he should employ Counsel;—but they who chose to defend themselves, always incurred the danger of injuring their case, by letting out facts which the discretion of Counsel would have thought it more prudent to conceal. In this respect, the present Defendant had imprudently admitted that, which, if he had left his Defence to his Counsel, would, probably, not have been admitted. If, however, he had not been directly instrumental in the publication of this libel, the Jury must recollect, that he had taken no pains to counteract its malignity. In calling witnesses, the Defendant had made an unnecessary parade and display of evidence, the object of which appeared

merely to be, that those matters might be placed on the Judge's notes of the trial, which might otherwise more regularly be brought forward by affidavits in mitigation of punishment. It was no defence in law to say, that he was not the writer of the libel,—he was equally responsible if it were inserted by his authorised agent. He who does a thing by the hands of another, is as responsible as if he had done it himself. If that were not the law, what mischiefs might not every Proprietor of a Newspaper commit with impunity?—He might employ a machine which should be constantly at work to infect and poison the public mind with his own malignity;—his types might be always ready to disseminate libels and calumnies, and yet he himself might put his hands before his eyes, and be determined to see nothing, or know nothing of the mischiefs that he was doing. He might swear, and get others to swear, that he had never seen the libel for which he was prosecuted. This, however, would not satisfy the law. He would be still responsible for all the mischiefs done either by himself or his authorised agents. This was a doctrine upon which there could be no doubt; it was established, and recognised as law by every Judge and every lawyer whom he had ever known since his acquaintance with Courts of Justice. The Defendant had quoted several expressions of different lawyers in their arguments; but it was of very little consequence what Mr. Kettleby or any other lawyer might have said in the management of their client's causes. He knew many men of the first authority in the present day, who would be very sorry to be held to whatever opinions they might have said in arguments at the bar. He felt it his duty to lay it down as the unquestionable Law of the Land, the law which to all the subjects of this realm is the security for every blessing which they enjoy, and the protection from every mischief to which they would otherwise be exposed,—that the Proprietor of every Newspaper is responsible for the contents of his Paper, whether written by himself or any other person. This had frequently been determined to be the law, even in cases where the sickness of such Proprietor made it absolutely impossible for him to see what was inserted in his Paper. Circumstances of this nature had, however, always their proper weight, when urged at a fit time in mitigation of punishment. He had seen twenty printers on the floor of the Court of King's Bench,

who had sworn to their absolute ignorance of the insertion of the offensive article; and such affidavits were always allowed their due weight at a proper time. The Defendant had pressed strongly upon the Jury the length of his imprisonment, which should have served as a caution to him to abstain from publishing libels. If his means of subsistence were entirely derived from the conduct of a Journal, it might have been supposed, that, after so severe a warning, he would have felt more than ever the necessity of superintending the articles which were to be inserted, and keeping out what was libellous. It might have been expected that he would have been particularly cautious in the choice of his agents; and that he would have found it necessary to exercise considerable care in their superintendence and control. On the contrary, it seemed that he left the management to his son, with a discretionary power to insert whatever he might think proper. If, however, a libel had found its way into a paper which was directly contrary to its usual tenor, and an apology had been speedily made, the case would not then, in all probability, have been selected for prosecution. If the present Defendant had really disapproved of the article in question, as he now professes to disapprove of it, why did he not take some means of manifesting his disapprobation in his own Paper? The Defendant, in the course of his argument, had taken different objections to the information, which he called a foolish and false record. His first objection was to the publication being stated to have taken place in the parish of St. Mary-le-Bow. This was, however, a usual description in law, and it was not to be expected that the rules of law, established for wise purposes, were to bend to the suggestions of every unlearned Defendant. How many convictions had taken place upon indictments for robberies and other criminal offences, alleged generally in the parish of St. Mary-le-Bow, in the ward of Cheap, whereas, in fact, they were in a different parish and ward? And yet no man had ever before thought it consistent with modesty to make such an objection. The Defendant had very properly exonerated his legal advisers from any blame in taking such an objection, for it was one which he could not believe that any Barrister would make. If the offence was laid in the proper county, there was no occasion for the parish to be expressly stated; and the constant practice was, not to specify the particular parish.

In burglary which had the Defence was difference, it scribe the broken into of the pla which the same acc not necess As to his ment had minal into the crimin that a ma his agent tion from his eyes his Lord would be man to s man wou Messina man wh State. killed th was goo —Men tend tha fore, wh and set libels th to inte and he that wh He mu tioned to exp Mr. R had c ground and fe the v many The J Reeve him o with him. he e been the f Lord him, that metap hold —an the t while

In burglaries, however, (a fatal flaw in which had been quoted as a precedent by the Defendant,) the reason of the thing was different. Since that was a local offence, it was absolutely necessary to describe the situation of the house which was broken into; and, therefore, the misnomer of the place was justly fatal in the case which the Defendant had cited. The same accuracy of local description was not necessary in setting out other offences. As to his next objection, that the indictment had falsely charged him with a criminal intention, the rule which pervaded the criminal as well as the civil law was, that a man is responsible for the acts of his agents. The law collects the intention from the act itself. If any man, with his eyes open, were to strike and wound his Lordship with a deadly weapon, it would be no satisfaction to him for the man to say he did not intend it. Such a man would be as mad as the cobbler of Messina, who went about shooting every man whom he thought mischievous to the State. His plea was,—“It is true I have killed this or that man, but my intention was good,—I meant to benefit the State.”—Men must generally be presumed to intend that which they do. A man, therefore, who chooses to conduct a newspaper, and sets up somebody else, who circulates libels through its means, must be presumed to intend the circulation of such libels; and he must be considered as having done that which he has so caused to be done. He must also be presumed to have sanctioned that which he never thought proper to express any disapprobation of. As to Mr. Reeves's case, which the Defendant had cited, that stood upon very different ground; his Lordship was in the cause, and felt perfectly satisfied at the time with the verdict of the Jury, and knew that many high in authority agreed with him. The Jury thought the publication of Mr. Reeves a very improper one, but acquitted him on the ground of his not writing it with the criminal intention imputed to him. In this opinion of that publication he entirely coincided. Mr. Reeves had been charged with writing his Book with the intention of vilifying the Houses of Lords and Commons; but it appeared to him, that he had no such intention, and that what gave offence was nothing but *metaphor run mad*. Mr. Reeves had got hold of a metaphor,—the trunk of a tree;—and he called Monarchy the trunk, and the two Houses of Parliament the branches, which might be lopped off without de-

stroying the trunk. Now, as to the question which of the parts of our Government was the original stem, and which were to be considered the adjuncts, was a question more of antiquarian research than of real importance; and Mr. Reeves was a great antiquary. His Lordship was, therefore, satisfied with that verdict, because he really believed that Mr. Reeves had not the intention imputed to him; and his reason for so believing was collected from the book itself. This was the great difference between the two cases. In Mr. Reeves's case it was from the perusal of the writing charged as a libel, that the Jury formed their opinion that there was no criminal intention; but in this case he believed that no such conclusion could be drawn from the writing itself.

As to the law of Libel he did not seek, nor ever had sought, to abridge the privileges which the Constitution gave to Juries. He must say, however, that he could hardly conceive that any sensible man could entertain a doubt but that the article for which the Defendant was now prosecuted did tend to disgust our soldiers, upon whose valour and good conduct the defence of the country, and every thing dear to us, now mainly depend.—He could have no doubt but that publications tending to alienate the soldiery, and directly defaming the Government, were Libels. He should wish to know by what law it was that the very lowest Officer in the State may be protected from calumnies, but that those who fill the highest and most important offices in the Administration are to find no similar protection?—He by no means wished to abridge the privilege of discussing temperately the measures of any Administration; but such discussion ought to be conducted innocently and decently. To charge the Members of the Administration generally with corruption was clearly libellous: and to do so on an occasion where corruption could not enter, was foolish. It was most evident in the present case, that granting medals to all Officers of a certain rank, who had seen a certain service, could not answer any purpose of corruption; and that extending them to every soldier in the army would have made the distinction of no value. The Defendant, in the publication before them, spoke of “the equivocal and barren victories of Roleia, Vimiera, Corunna, and Talavera.”—Now, although circumstances had prevented results as important as we could have wished following those battles, still he conceived there was something in

them in which Englishmen naturally felt a pride; and, as to the valour of our soldiers, he believed it was as conspicuous in these battles, as in the ancient battles, which the Defendant had alluded to, of Cressy, Poitiers, &c. The Defendant had asked, "why were the soldiers who fought in those battles not also honoured with medals?"—and said, "that such distinction was an insult to the army."—Now he would ask, did not the soldier feel a pride in the honours and distinctions conferred upon his Officer?—The Defendant had also spoken of "the drooping energies and wasted resources of this country." His Lordship did not know how the energies of this country could be said to droop, and was convinced that the energies of Englishmen would always be found sufficient to defend their country. He would wish to know, for what period of time the energies of the people of this country have been supposed to be declining?—Was it during the career of Lord Nelson's victories?—was it when Captain Hoste lately conquered in the Mediterranean a hostile force of double the number?—or was it the other day, when he himself heard with his own ears, the cannon of our cruizers that repulsed Buonaparté's flotilla, under the eyes of that great Commander, and took one of his praams?—The telling the army that they were insulted by their Government appeared to him a Libel of the most dangerous tendency; and the calumnies against the Members of the Government were equally libellous. Character is of the utmost importance to every man in high trust; and those in the highest situation have a right to the protection of their characters from those coarse, brutal, and calumnious, misrepresentations which were so often poured out against them. The principal danger of those fool calumnies, which were often bestowed most undeservedly, was, that it was apt to make men callous to Public censure, and to generate a sort of indifference as to any thing which might be published with respect to their Public conduct. In this manner the licentious abuse of the press prevented that Public good which might be expected from the fair exercise of it. He would not lay it down merely from his own authority, but he would state it from the authority of Chief Justice Holt, (than whom there was no warmer friend of the liberty of the sub-

ject,) that a libel on the Government of the Country, charging them with corruption and baseness, was a sort of libel which ought to be severely punished. To tell the Army "they were insulted," appeared clearly to him to be a dangerous libel; and from this commiseration of the situation of the English soldiers, the writer (as is the custom in such articles) proceeds to compliment Buonaparté. "With him, merit is always rewarded, and the situation of the soldier attended to." He could not conceive what greater mischiefs the emissaries of Buonaparté (if there are any in this Country) could do, than disseminate such doctrines among our soldiers. As to the Government that was charged with so much imbecility and corruption, he did not himself belong to the Administration, whatever was its character, imbecile or not so; but he could not have a doubt in his mind but that the charging the Members of the Administration with imbecility and corruption in their office was a libel. He had also no manner of doubt, but the Defendant was legally responsible for the insertion of such an article in his paper. He knew that it was within the province of the Jury to determine on the whole of the case; but it was his duty also to state to them his opinion of the articles before them: and that opinion was clearly that it was a libel. If the Jury coincided in that opinion, they would of course find the Defendant Guilty.

The Trial of this Information lasted from Nine o'clock in the Morning till One in the Afternoon. The Jury, after an absence of four hours, returned to their box at Five o'clock, and delivered in writing the following verdict:—"The Jury find the Defendant guilty of printing and publishing the Libel, through the medium of his Agent; but on account of his peculiar situation, earnestly recommend him to mercy."

Mr. Lowten, the Clerk of the Court, objected to this verdict, unless he might consider it as Guilty. A cry of "No, No," immediately issued from the Jury, and they again retired; and, after consulting about Ten Minutes, returned with a Verdict of "NOT GUILTY!!!"

On the announcement of the Verdict, acclamations of joy proceeded from the persons who had waited in the Court for the result.